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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

AARON GAWLICK, 03-B-1942,

Petitioner,

-v-

08-CV-6429L (P)

ORDER

JAMES CONWAY,

Respondent.

Petitioner Aaron Gawlick, acting *pro se*, an inmate of the Attica Correctional Facility, seeks relief pursuant to 28 U.S.C. § 2254, alleging that his conviction in County Court, Monroe County, State of New York, was unconstitutionally obtained, as set forth more precisely in the petition.

Petitioner filed a response to the order directing him to show cause why his petition was not barred by the statute of limitations imposed on habeas petitions by 28 U.S.C. § 2244(d)(1) as amended on April 24, 1996.

Petitioner's time in which to file his petition began on April 9, 2007, when his time in which to seek direct review by writ of certiorari to the United States Supreme Court expired. Walker v. Artuz, 208 F.3d 357, 358 (2d Cir. 2000), *rev'd on other grounds sub nom. Duncan v. Walker*, 533 U.S. 167 (2001). Petitioner had a collateral attack pending in the state courts until October 4, 2007, which tolled his time to file for approximately five months and twenty-five days. Petitioner filed this petition on September

18, 2008, and with the tolling, the petition appears to be timely. Accordingly,

IT HEREBY IS ORDERED as follows:

1. Respondent shall file and serve an answer to the petition, in accordance with Rules 4 and 5 of the Rules Governing Section 2254 Cases in the United States District Courts, no later than **March 23, 2009**. Further, the answer shall state whether a trial or any pre-trial or post-trial evidentiary proceeding was conducted. If any such proceeding was conducted, under the authority of Rule 4, the Court hereby directs respondent to provide to the Court the transcript of the proceeding, together with any record(s) of such proceeding, and such documents will be filed in the official record of this case.

Respondent also shall file and serve by the above date a memorandum of law addressing each of the issues raised in the petition and including citations of relevant supporting authority.

Within thirty (30) days of the date this order is served upon the custodian of the records, the Clerk of Court or any other official having custody of the records of the proceedings in County Court at issue now before this Court shall submit such records to respondent or the respondent's duly authorized representative.

If petitioner appealed from the judgment of conviction or from an adverse judgment or order in a post-conviction proceeding, under the authority of Rule 4, the Court hereby directs respondent

to provide to the Court a copy of the briefs on appeal and the opinions of the appellate courts, if any, and such documents will be filed in the official record of this case.

Petitioner shall have thirty (30) days upon receipt of the answer to file a written response to the answer and memorandum of law.

Within thirty (30) days of the date this order is filed with the Clerk of Court, respondent may file a motion for a more definite statement or a motion to dismiss the petition, accompanied by appropriate exhibits which demonstrate that an answer to the petition is unnecessary. The timely filing of such motion shall extend the time for filing an answer for fourteen (14) days, but the failure of the Court to act upon the motion within that time shall not further extend the time for filing an answer.

2. The Clerk of Court shall serve a copy of the petition (Docket No. 1), together with a copy of petitioner's response to the Court's order to show cause regarding the timeliness of the petition (Docket No. 4) and a copy of this order, by certified mail, upon respondent Superintendent of Attica Correctional Facility and upon the Assistant Attorney General in Charge, 144 Exchange Street, Rochester, New York 14614. To advise appropriate Monroe County officials of the pendency of this proceeding, the Clerk of Court shall also mail a copy of this order to the District Attorney of Monroe County.

PETITIONER MUST FORWARD A COPY OF ALL FUTURE PAPERS AND
CORRESPONDENCE TO THE ATTORNEY APPEARING FOR RESPONDENT.

SO ORDERED.

S/ Michael A. Telesca

MICHAEL A. TELESKA
United States District Judge

Dated: February 10, 2009
Rochester, New York